

March 2, 2006

Mr. John Flynn
Broadwater County Attorney
P.O. Box 96
Townsend, MT 59644-0096

Re: Park Dedication for Minor Subdivision Opinion Request

Dear Mr. Flynn:

You have requested an opinion from the Attorney General regarding a question arising from Mont. Code Ann. § 76-3-621(3)(a). Specifically, you asked the Attorney General to determine whether the phrase “may not be required,” imparts that a park dedication (1) shall not be required for a minor subdivision; or (2) may be so dedicated at the discretion of the governing body. It has been determined that a letter of advice rather than a formal opinion is appropriate in response to your question.

By way of example, Mont. Code Ann. § 39-51-1125(5) states that “[a] **payment may not be required** . . . with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages.” (Emphasis added.) The Compiler’s Comments for this statute states that subsection five was inserted to provide for “**no payment** if employer continues employment with no hour or wage reduction.” (Emphasis added.)

In addition, Mont. Code Ann. § 46-15-322(5) states that “[t]he **prosecutor may not be required** to prepare or disclose summaries of witnesses’ testimony.” (Emphasis added.) In the Commission Comments for that subsection, the following is explained:

Under the 1987 code, the disclosure of summaries of witness statements may have been tolerated. The subsection amends the code to expressly state that the **preparation and existence of summaries of witness statements need not be disclosed**. [Emphasis added.]

In both of these examples, it is clear that the Legislature’s intended use of the phrase “may not be required” was that the particular action shall not be required. While this

Mr. John Flynn
March 2, 2006
Page 2

phrase is used throughout the Montana Code, it is never defined nor has the Montana Supreme Court interpreted it. The legislative history of Mont. Code Ann. § 76-3-621 is silent as to the use of this phrase as well.

However, by way of comparison to the intent revealed in other code sections, it is my opinion that under Mont. Code Ann. § 76-3-621(3)(a), “[a] park dedication may not be required for a minor subdivision,” means that a park dedication shall not be required for a minor subdivision.

This letter of advice may not be viewed as a formal opinion of the Attorney General.

Sincerely,

JOSLYN M. HUNT
Assistant Attorney General

jmh/cv